

DEPARTMENT OF SOCIAL SERVICES

744 P Street, Sacramento, CA 95814



March 24, 1989

ALL COUNTY LETTER NO. 89-26

TO: ALL COUNTY WELFARE DIRECTORS
ALL PUBLIC AND PRIVATE ADOPTION AGENCIES
ALL SDSS ADOPTIONS DISTRICT OFFICES

SUBJECT: 1. REVISED INDIAN CHILD WELFARE ACT PROCEDURES
SUPERSEDES ACL NO. 85-113, DATED NOVEMBER 8, 1985
2. INDIAN CHILD WELFARE ACT (ICWA) - TRIBAL
NOTIFICATION

The purpose of this letter is threefold:

First, it is to inform County Welfare Departments (CWDs) and adoption agencies of recent information from the Bureau of Indian Affairs (BIA) regarding the applicability of the Indian Child Welfare Act (ICWA) to children who are members of non-federally recognized tribes.

Second, it informs adoption agencies of changes in procedures necessary to request ICWA determinations for children who are in adoption planning. The latter changes were agreed upon between the BIA and the State Department of Social Services' (SDSS) Adoptions Branch and will necessitate revisions to current ICWA adoption procedures.

Third, in response to questions received by the Department, this letter provides clarification on when the federally recognized Indian tribe is to be notified of pending adoption proceedings which are subject to provisions of the ICWA.

1. REVISED INDIAN CHILD WELFARE ACT PROCEDURES

The major change which impacts both adoption agencies and CWDs which provide services to children who have possible Indian heritage regards the applicability of the ICWA to children that are members of non-federally recognized Indian tribes. The BIA recently provided the Department with a new interpretation of "Indian Child" issued by the U.S. Department of Interior, Washington, D.C., which states that children who are members of non-federally recognized Indian tribes are not eligible for the protections of the ICWA. A

listing of federally recognized tribes is contained in the Federal Register, Volume 51, No. 132, dated Thursday, July 10, 1986. Copies can be obtained by writing to the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402-9371. For tribes aboriginal to California which do not appear on this list, the BIA Agency Office will determine whether the tribe is federally recognized for purposes of the ICWA.

For CWDs, this means that Child Welfare Services/Indian Child Welfare Act regulations must be followed only when providing services to Indian children who belong to, claim membership in, or who are believed to be eligible for membership in, a federally recognized Indian tribe. When child welfare services (CWS) are provided to Indian children of non-federally recognized Indian tribes, all other CWS regulations are to be followed; the only change is that the specific ICWA-related regulations do not apply. Adoption agencies are still required by California Civil Code Section 224a to request a Certificate of Degree of Indian Blood (CDIB) for every child whose Indian heritage has been verified, regardless of whether or not the ICWA applies to the child.

Simply stated, an Indian child may not be subject to the requirements of the ICWA, yet still be eligible for a CDIB.

The second change is that effective immediately the Department's Adoptions Branch will decide if there is sufficient information on the AD 4311 with which to determine the ICWA's applicability or eligibility for a CDIB. This determination was previously made by the BIA Sacramento Area Office before they forwarded the information on to the tribe, BIA Agency Office or out-of-state Area Office. If there IS NOT sufficient information, the Department will return the form to the public/private adoption agency stating there is insufficient information to determine Indian heritage and that a CDIB is not being requested. If there IS sufficient information, the Department will forward the AD 4311 directly to the Indian tribe or appropriate BIA Agency Office if the designated tribe is federally recognized for determination of the applicability of the ICWA and a CDIB; and to the tribe, BIA Agency Office or out-of-state BIA Area Office for a CDIB only, if the tribe is non-federally recognized.

Listed below are the procedures that must be followed during adoption planning to implement these and other changes agreed upon with BIA. Instructions for County Welfare Departments/County Welfare Services' Programs are enumerated in Section A which have NOT changed. Instructions for adoption agencies are contained in Section B which have changed.

Section A: County Welfare Departments' Procedures-Child Welfare Services

- I. The County Welfare Department sends to the BIA Sacramento Area Office:
 - A. Completed SOC 318 form (Request for Confirmation of Child's Status as Indian);

NOTE: The caseworker's name, telephone number (including area code) and complete agency address must be noted in the spaces provided on the SOC 318.
 - B. A photocopy or copy of the child's state-certified birth certificate; and
 - C. A signed and notarized paternity statement of the alleged natural father, if the father is the identified Indian parent.
- II. The BIA Sacramento Area Office:
 - A. Forwards the ICWA referral submitted by the County Welfare Department to the appropriate tribe, BIA agency office, or out-of-state BIA area office;
 - B. Instructs the receiving tribe, BIA agency office or out-of-state BIA area office to respond directly to the County Welfare Department;
 - C. Transmits a copy of the referral letter to the requesting County Welfare Department;
 - D. Does not retain a copy of the ICWA requests but retains only a copy of its referral letter forwarded to the tribe, BIA agency office, or out-of-state BIA area office; and
 - E. Does not provide any further monitoring or liaison activity regarding the ICWA case.
- III. Upon receipt of the information forwarded from the BIA Sacramento Area Office, the tribe, BIA agency office, or out-of-state BIA area office:
 - A. Reviews the referred information to determine whether the subject child comes within the provisions of the ICWA;

- B. Requests additional information from the referring County Welfare Department if more information is required to make the ICWA determination; and
 - C. Provides written documentation to the County Welfare Department on the applicability of the ICWA to the designated child.
- IV. The County Welfare Department shall maintain written documentation in the child's case record.

Section B: Adoption Agencies' Procedures

Adoption agencies that provide relinquishment and independent adoptions services shall comply with the following procedures.

- I. Adoption agency sends the State Department of Social Services (SDSS) Adoptions Branch for every child claiming Indian heritage:
 - A. A completed form AD 4311, Information on American Indian Child (Adoption Program), with the caseworker's name, telephone number (including area code), and complete agency address indicated in the spaces provided on the form;

NOTE: Attached is a list of suggested questions that the caseworker can ask which will assist in completing the AD 4311. These questions were received from the BIA Sacramento Area Office.
 - B. A photocopy or copy of the child's birth certificate; and
 - C. A signed and notarized paternity statement of the alleged natural father, if the father is the identified Indian parent.
- II. SDSS Adoptions Branch:
 - A. Will review the AD 4311 for completeness;
 - B. Will determine whether there is sufficient information for an Indian determination;
 - C. If there is NOT sufficient information, the SDSS Adoptions Branch will return the AD 4311 to the adoption agency.

D. If there is sufficient information, the SDSS Adoptions Branch will:

1. For federally recognized tribes located outside of California:
 - a. Establish a tracking system on the child for subsequent ICWA verification activities;
 - b. Transmit the AD 4311 and other documents directly to the appropriate tribe, BIA agency office or out-of-state BIA area office;
 - c. Transmit a copy of the referral letter to the requesting adoption agency;
 - d. Instruct the receiving tribe, BIA agency office, or out-of-state BIA area office to respond directly to the adoption agency;
 - e. Retain a copy of the ICWA referral and supporting documents and a copy of its referral letter forwarded to the tribe, BIA agency office, or out-of-state BIA area office; and
 - f. Provide no further monitoring or liaison activity on the case.
2. For non-federally recognized tribes located outside of California:
 - a. Establish a tracking system on the child for subsequent CDIB verification activities; and
 - b. Inform the adoption agency that the tribe indicated for the subject child is a non-federally recognized tribe and, therefore, the child is not subject to the provisions of the ICWA; however, the AD 4311 is being forwarded to the tribe or appropriate BIA agency for the issuance of a CDIB.
3. For tribes aboriginal to California:
 - a. Establish a tracking system on the child for subsequent ICWA and CDIB verification activities;

- b. Transmit the AD 4311 and other documents to the appropriate BIA agency office;
- c. Transmit a copy of the referral letter to the requesting adoption agency;
- d. Retain a copy of the ICWA/CDIB referral and a copy of its referral letter forwarded to the BIA agency office; and
- e. Provide no further monitoring or liaison activity on the case.

III. BIA Sacramento Area and other Offices for tribes aboriginal to California:

- A. Determine whether the subject child comes within the provisions of the ICWA;
- B. Acquire additional information if more information is required to make the ICWA/CDIB determination; and
- C. Issue a CDIB.

IV. Upon receipt of the AD 4311 and other documents, the tribe, BIA agency office, or out-of-state BIA agency office coordinates directly with the adoption agency to:

- A. Determine whether the subject child comes within the provisions of the ICWA;
- B. Acquire additional information if more information is required to make the ICWA/CDIB determination; and
- C. Issue a CDIB.

V. Adoption agencies must:

- A. Communicate directly with the receiving tribe/agency, as necessary. Adoption agencies may not request the intervention/assistance from the BIA agency office after the ICWA request has been forwarded to the appropriate tribe/agency;
- B. Contact SDSS Adoptions Branch if the agency has not been contacted by the receiving tribe, BIA agency office or out-of-state BIA agency office for children whose tribe is aboriginal to California

within 30 days after the date of the transmittal letter to resolve any other major ICWA-related issues; and

- C. For relinquishment adoptions only, after receipt of the ICWA determination, the adoption agency shall send to SDSS Adoptions Branch the AD 90, Supporting Information for Issuance of the Department of Social Services Waiver and Acknowledgement, and all copies of correspondence sent to or received from the tribe or BIA agency office.

NOTE: SDSS Adoptions Branch cannot issue its "Acknowledgement and Waiver" until a determination whether or not the child is subject to the provisions of the ICWA has been made.

2. TRIBAL NOTIFICATION

How parental rights are terminated in an adoption proceeding determines whether tribal notification is required pursuant to the ICWA. In any adoption proceeding where the parental rights of a parent are being involuntarily terminated by an adoption agency, the child's tribe has a right to be notified if the tribe is federally recognized for purposes of the ICWA.

Agency Adoptions Program:

Section 1911(b) of the ICWA (25 U.S.C., Section 1901-1923) (Indian Tribe Jurisdiction...Transfer...) requires that the court must transfer (in the absence of good cause or objection by either parent) termination of parental rights' proceedings to the jurisdiction of the child's tribe for those Indian children NOT domiciled or residing on the tribe's reservation upon petition of either parent, an Indian custodian or the tribe. The tribal court is permitted to decline the transfer of the jurisdiction.

Section 1911(c) (Indian Tribe Jurisdiction...State Court Proceedings; Intervention) permits both the child's Indian custodian and tribe to intervene in the termination of parental rights proceedings at any point.

Section 1912(a) (Pending Court Proceedings-Notice...) requires that the party (adoption agency) seeking the termination of parental rights to the Indian child must notify the parent or Indian custodian AND the child's tribe by registered mail of the pending proceedings and of their right to intervene.

Independent Adoptions Program:

Section 1911(b) see above. This section permits the biological parent of the Indian child to petition for the transfer of the proceedings to the tribal court. While this is unlikely to occur in an independent adoption, the parent does have this right under the ICWA and can petition the court for a transfer of jurisdiction.

Sections 1911(c) and 1912 (see above) do not apply to an independent adoption proceeding unless court action is taken to involuntarily terminate the parental rights of any parent. If a Civil Code (CC) Section 232 or 7017 action is taken on any parent, the adoption becomes an involuntary proceeding per the ICWA and the requirements of Sections 1911(b), 1911(c) and 1912(a) must be followed. Simply put, notification to a federally recognized tribe pursuant to the ICWA is not required only when all parents sign a consent to the adoption on the appropriate form (AD 857; 858; 859; 860 or 861).

Nothing in this letter should be interpreted to exempt any agency from submitting an AD 4311 to the Department for the purpose of determining the child's Indian heritage, regardless of whether the tribe in question is federally recognized for purposes of the ICWA. An AD 4311 must be submitted whenever there is an indication that the child is of Indian heritage.

County Welfare Departments should refer all questions regarding CWS and ICWA procedures to the Adult and Family Services Operations Bureau at (916) 445-0623 or ATSS 485-0623. Public and private adoption agencies should refer all questions regarding these revised adoptions planning procedures to the Adoptions Policy Bureau at (916) 322-4228 or ATSS 492-4228.



LOREN D. SUTER
Deputy Director

Attachment

cc: CWDA

1. Are you of Indian descent? (Question is directed to natural mother)

2. _____ yes _____ no
 _____ I think so
 _____ I'm not sure

3. Is the father of Indian descent?
 _____ yes _____ no
 _____ I think he is _____ unknown
 _____ I'm not sure

If Yes, I think he is, or I'm not sure is possible cause to investigate.
 (Repeat questions 4-13 when asking about the father's background).

4. What tribe are you from? _____ tribe/band
 (What tribe is he from?) _____ tribe/band

5. What reservation are you from? _____ reservation
 (What reservation is he from?) _____ reservation

6. Are you a California Indian? If so, what reservation/rancheria.
 (Is he a California Indian?)

_____ reservation/rancheria
 _____ reservation/rancheria

7. If not sure. Where were you born? _____ State/Not in USA
 (Circle one above)
 (Where was he born?) _____ State/Not in USA
 (Circle one above)

(Just because someone is born in this State or any other State
 does not necessarily mean they are an Indian from that State.)

8. Are you enrolled with your tribe? _____ yes _____ no
 (Is he enrolled with a tribe?) _____ yes _____ no

9. Do you have a roll number/census number? _____ yes _____ no
 (Does he have a roll number/census number?) _____ yes _____ no

10. Where were your ancestors or grandparents from originally?
 (Where were his ancestors or grandparents from originally?)

11. They are originally from _____ State/Not in USA
 (Circle one above)

His ancestors/grandparents are originally from _____ State
 _____ Not in USA
 (Circle one above)

12. Have you or your parents ever received a certification of degree of Indian
 blood or received any money or services from the Bureau of Indian Affairs
 (BIA).

Same question for him/his parents _____ yes _____ no
 _____ yes _____ no

13. If Yes, where and when _____

If Yes, he has, where and when _____